

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

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MARC VEASEY, JANE HAMILTON, )  
SERGIO DELEON, FLOYD J. CARRIER, )  
ANNA BURNS, MICHAEL MONTEZ, )  
PENNY POPE, OSCAR ORTIZ, KOBY )  
OZIAS, JOHN MELLOR-CRUMLEY, PEGGY )  
HERMAN, EVELYN BRICKNER, GORDON )  
BENJAMIN, KEN GANDY, LEAGUE OF )  
UNITED LATIN AMERICAN CITIZENS )  
(LULAC), AND DALLAS COUNTY, TEXAS, )

*Plaintiffs,*

v.

RICK PERRY, Governor of Texas; and JOHN )  
STEEN, Texas Secretary of State, )

*Defendants.*

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UNITED STATES OF AMERICA, )

*Plaintiffs,*

TEXAS LEAGUE OF YOUNG VOTERS )  
EDUCATION FUND, IMANI CLARK, AND )  
MICHELLE BESSIAKE, )

*Plaintiff-Intervenors,*

TEXAS ASSOCIATION OF HISPANIC )  
COUNTY JUDGES AND COUNTY )  
COMMISSIONERS, AND HIDALGO )  
COUNTY, )

*Plaintiff-Intervenors,*

v.

STATE OF TEXAS, JOHN STEEN, in his )  
official capacity as Texas Secretary of State; )  
and STEVE McCRAW, in his official capacity )  
as Director of the Texas Department of Public )  
Safety, )

*Defendants.*

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CIVIL ACTION NO.

2:13-CV-193 (NGR)

[Lead case]

CIVIL ACTION NO.

2:13-CV-263 (NGR)

[Consolidated case]

TEXAS STATE CONFERENCE OF NAACP )  
 BRANCHES; and the MEXICAN )  
 AMERICAN LEGISLATIVE CAUCUS OF )  
 THE TEXAS HOUSE OF )  
 REPRESENTATIVES, )

*Plaintiffs,* )

v. )

JOHN STEEN, in his official capacity as )  
 Secretary of State of Texas; and STEVE )  
 McCRAW, in his official capacity as Director )  
 of the Texas Department of Public Safety, )

*Defendants.* )

CIVIL ACTION NO.  
 2:13-CV-291 (NGR)  
 [Consolidated case]

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BELINDA ORTIZ, LENARD TAYLOR, )  
 EULALIO MENDEZ JR., LIONEL )  
 ESTRADA; ESTELA GARCIA ESPINOSA, )  
 LYDIA LARA, MARGARITO MARTINEZ )  
 LARA, MAXIMINA MARTINEZ LARA, AND )  
 LA UNION DEL PUEBLO ENTERO, INC. )

*Plaintiffs,* )

v. )

STATE OF TEXAS, JOHN STEEN, in his )  
 official capacity as Texas Secretary of State; )  
 and STEVE McCRAW, in his official capacity )  
 as Director of the Texas Department of Public )  
 Safety, )

*Defendants.* )

CIVIL ACTION NO.  
 2:13-CV-348 (NGR)  
 [Consolidated case]

**MOTION FOR PROTECTION**  
**ON THE AMENDED NOTICE OF DEPOSITION OF COBY SHORTER**

The Texas Secretary of State (“SOS”) moves for protection regarding the Amended Notice of Deposition (“Notice”) for Deputy Secretary of State, Mr. Coby Shorter (*see* Ex. 1), who has *not* been designated as a Rule 30(b)(6) witness on behalf of the SOS. The SOS designated Keith Ingram as its 30(b)(6) witness, and

Mr. Ingram's deposition has already been taken in this case. The United States cannot show the extraordinary circumstances required to take the deposition of Mr. Shorter as a high-ranking agency official. And given that the SOS has already testified through a 30(b)(6) witness, the United States should at a minimum limit the topics and timeframe of Mr. Shorter's deposition.

The Notice calls for Mr. Shorter to appear in Austin, Texas at 9:00 a.m. on Tuesday, June 17, 2014. It also calls for the production of documents in Mr. Shorter's custody, possession, or control responsive to an attachment to the Notice. Counsel for Mr. Shorter objected to the document request. *See* Ex. 2 (Coby Shorter's Objections to the Notice to Produce Documents (May 22, 2014)). Counsel for the defendants have notified the United States that Mr. Shorter has no discoverable information, and the United States has not indicated what discoverable information Mr. Shorter has.

Mr. Shorter is an apex witness. The well-settled rule in the Fifth Circuit is that "exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted." *In re Office of Inspector General*, 933 F.2d 276, 278 (5th Cir. 1991) (per curiam) (citation omitted). "Top executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions." *Id.* (citations omitted). "High ranking government officials have greater duties and time constraints than other witnesses." *In re United States*, 985 F.2d 510, 512 (11th Cir.) (per curiam), *cert. denied*, 510 U.S. 989 (1993). "[T]he Supreme Court has indicated that the practice

of calling high officials as witnesses should be discouraged.” *Id.* (citing *United States v. Morgan*, 313 U.S. 409 (1941)).

In his role as Deputy Secretary, Mr. Shorter is has the very role contemplated by the Fifth Circuit to be protected from testimony absent “exceptional” or “extraordinary” circumstances. He has the final sign-off on the agency’s policies, which are developed and implemented at levels below him on the organizational chart. The Secretary of State designated *not Mr. Shorter*, but Keith Ingram as its 30(b)(6) witness, and Mr. Ingram’s deposition has already been taken in this case. Indeed, Mr. Shorter may not be compelled to testify because he has no unique knowledge relating to this litigation.

To protect Mr. Shorter and the SOS’s rights pursuant to the Federal Rules of Civil Procedure and their right to due process, the SOS respectfully asks the Court for protection.

Dated: June 17, 2014

Respectfully submitted,

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Attorney General of Texas

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JONATHAN F. MITCHELL  
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/s/ John B. Scott

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COUNSEL FOR THE STATE OF TEXAS,  
RICK PERRY, JOHN STEEN, and STEVE  
MCCRAW

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2014, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ John B. Scott  
JOHN B. SCOTT

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for the defendants have conferred with counsel for the United States, pursuant to Southern District of Texas Rule 7.1. The United States has been agreeable to the postponing of the date of Mr. Shorter's deposition. However, because the time of compliance for the current deposition notice is upon us, the defendants are required to file this motion for protection. Counsel for the defendants will continue discussing limiting the subject matter and timeframe of Mr. Shorter's deposition with counsel for the United States.

/s/ G. David Whitley  
G. David Whitley